SUPREME COURT OF THE UNITED STATES.

No. 367.

THE BARK SCIENCE AND CARGO, JOHN READ ET AL., CLAIMANT, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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1 *Order of sale of bark Science.—Issued September 19th, 1864; returned and filed October 17th, 1864.*

District court of the United States of America for the eastern district of Louisiana, holding sessions in the city of New Orleans, May term, A. D. 1864.

NEW ORLEANS, *Monday, the 19th day of Sept'r*, 1864.

Court met pursuant to adjournment.

Present, the honorable Edward H. Durell, judge.

UNITED STATES
vs.
BARK SCIENCE and CARGO. } No. 7781.

It appearing now of record that the claimant and owner does not desire to bond the bark Science, it is ordered that the marshal do unliver and store the cargo in a secure place, and that he sell the said bark Science after complying with the legal formalities, the proceeds to be deposited as the law directs.

True copy from the minutes.

[SEAL.] K. LOEW, *D'y Clerk.*

2 *Marshal's return.*

Received September 19th, 1864, and on the 21st of September, 1864, by virtue of the within order of court, I advertised for sale, according to law, the bark Science, her tackle, apparel, and furniture, by advertisements in the True Delta, a daily newspaper printed and published in New Orleans, on the 21, 24, 27 Sept. and 1st Oct., 1864, announcing the said sale to take place at the U. S. marshal's warehouse, Nos. 38 and 40 Old Levee street, on the 1st day of October, 1864, at 12 o'clock a. m., on which day and hour and place, all the formalities required by law having been complied with, and after due proclamation the said bark Science, her tackle, &c., was adjudicated to John Read, of New Orleans, for the price and sum of eight thousand nine hundred dollars cash, he being the last and highest bidder thereon; all of which amount of eight thousand nine hundred dollars, being the gross proceeds of said sale, I this day deposited with the cashier of the First National Bank of New Orleans, to be disposed of as the court directs.

C. BULLITT, *U. S. Marshal,*
3 By A. BOISBLANC, *D'y U. S. Marshal.*

Received from Cuthbert Bullitt, U. S. marshal, eight thousand nine hundred dollars, being the gross proceeds of the aforegoing sale; the moneys to be disposed of as the court directs, and for which I have signed duplicate receipts.

A. C. GRAHAM,
P't First National Bank, N. O.

Returned 17th Oct., 1864.

Annexed:

I, G. A. Hall, U. S. prize auctioneer, do hereby certify that under and by virtue of an order of the hon. the district court for the eastern district of Louisiana, directed to the U. S. marshal for the district aforesaid, in the suit of the United States *versus* The Bark Science, her tackle, apparel, &c., and cargo, No. 7781 of the docket of said court, I offered the bark Science, her tackle, apparel, and furniture for sale at public auction, on Saturday, the 1st day of October, 1864, at 12 o'clock m., at the U. S. marshal's warehouse, Nos.
4 38 and 40 Old Levee street, at which said sale the same was sold for cash, to the purchaser, and for the amount as set forth, as follows:

John Read—The bark Science, her tackle, apparel, and furniture, $8,900.

G. A. HALL,
U. S. Prize Auctioneer.

N. O., Oct. 1st, 1864.

Bill of G. A. Hall, prize auct'r.—Filed October 17th, 1864.

United States—suit No. 7781—to G. A. Hall, U. S. prize auct'r:

To advertising, Era		$16 50
"	Times	11 90
"	Delta	19 57
"	Picayune	5 25
Commissions on sale:		
Vessel, 8,900, at ½ per cent		44 50
		97 72

(E. & O. E.)

New Orleans, Oct. 1st, 1864.

5 *Motion to sell part of cargo to defray marshal for disbursements, and submission on same.—From minutes of December 15th, 1864.*

UNITED STATES
vs.
BARK SCIENCE and CARGO. } No. 7781.

The following motion was this day made by Miles Taylor, esq., on behalf of the U. S. marshal:

"On motion of Miles Taylor, of counsel for Cuthbert Bullitt, marshal of the United States, and on suggesting to the court that during vacation, and in the absence of the presiding judge of this court, it became necessary to effect an insurance and two reinsurances of the cargo of the said bark, and that he, the said marshal, did effect an insurance of the same and two renewals; and on also suggesting to the court that the said cargo, consisting of 334 bales of cotton and a number of crates of cotton, were stored in the Mississippi press,

and that it became necessary to remove the same therefrom in
6 consequence of munitions of war being stored in the said press, which increased the risk, so that said removal became necessary to prevent the policy of insurance thereon from being rendered inoperative and invalid, and that the said cargo was removed by the said marshal to the Merchants' press; and on further suggesting to the court that afterwards, the parties in interest having informed the marshal that owing to the bad condition in which the said cotton then was, a portion being loose, and many bales much torn, so that the risk from fire was greatly increased, and the insurers were unwilling to take the risk for a renewal of the insurance unless the cotton was put in good order; and it further appearing that the cotton was exposed to deterioration from its exposure, he, the said marshal, in conformity with the request of the parties in interest, and to preserve the said cotton and prevent its deterioration in value, had the same repacked and rebaled; and that thereupon the insurance company (the Louisiana Mutual Insurance Company) consented to an extension of the insurance on said cotton for 60 days from the 12th day of this month, and that the marshal, in the premises, incurred the expenses mentioned in the schedule annexed, amounting to
7 $11,087—it is ordered that the marshal be authorized and empowered to sell so much of the said cotton as may be necessary to defray and discharge the expenses so incurred."

And after hearing the objections of Chas. W. Horner, esq., proctor for De Jersey & Co., claimants of part of the cargo, and the assent of Edw'd Briggs, esq., proctor for claimants, the court took time to consider.

Annexed:

UNITED STATES
vs.
BARK SCIENCE and CARGO. } No. 7781.

Rough schedule of disbursements by the U. S. marshal, made at the request of the proctor and interested parties in this case, exclusive of fees, &c.

First insurance on 334 bales, at L'a Mutual Ins. Co ..	$3,790 00
" renewal on same at a pickery	1,080 00
Second " on value, $160,000	2,800 00
Policies and stamps	15 00
Putting the cargo in order, rebaling, picking, new bagging, ropes, &c., $1,353, $400, and $300	2,053 00
Unloading cargo, $300; cartage, 2 times, $393,	693 00
8 Weighing, sampling, preparatory to insurance, to ascertain value	254 00
Other cash disbursements by marshal, about	400 00
Disbursements, exclusive of fees	11,087 00

Order to sell cargo of bark Science.—Issued December 24th, 1864; returned and filed February 15th, 1865.

District court of the United States of America for the eastern district of Louisiana, holding sessions in the city of New Orleans, November term, A. D. 1864.

NEW ORLEANS, *Saturday, the 24th day of Dec'r, A. D.* 1864.

Court met pursuant to adjournment. Present, the honorable Edward H. Durell, judge.

UNITED STATES
vs.
BARK SCIENCE and CARGO. } No. 7781.

For the reasons now orally assigned by the court, it is ordered, adjudged, and decreed that the U. S. marshal do sell at public
9 auction and according to law, the cargo of cotton of the bark Science, and that the proceeds be held by him subject to the further order of court.

True copy from the minutes.

W. S. BENEDICT, *D'y Clerk.*

U. S. marshal's return.

Received December 24th, 1864, and, in obedience to the within order, I advertised for sale on the 6th day of January, 1865, the cargo of the bark Science, in the Era, a newspaper printed and published in the city of New Orleans; but previous to the day of sale as so advertised aforesaid, I received a letter from Edward Briggs, esq., proctor for the claimants, (a copy of which letter is hereto annexed,) and in accordance with the desire expressed in said letter, as also with the personal request of said proctor, who stated that one of the principal claimants was sick and could not give his personal attention to the matter in hand, I therefore postponed the sale as desired, and notified the public of said postponement through the columns of the "Era" and "True Delta," two of the newspapers printed and published in New Orleans; and again on the 28th day of Janu-
10 ary, 1865, I published the said cargo for sale in the "Times" and "True Delta," two newspapers printed and published as aforesaid, to take place on the 11th day of February, 1865, at the Merchants' press, yard No. 5, in the city, at 12 o'clock m., in which said publications the day, hour, place, and terms of said sale were fully set forth, as also by the crier on the day of sale, and all the previous legal requisites having been fulfilled and complied with, I caused the said cargo to be offered for sale, on the day and at the place and time as set forth above, at which said sale the same was sold for cash, in the lots and to the purchasers as set forth in the proces verbal of C. A. Hall, U. S. prize auctioneer, hereto annexed as a part of this return; reference is also made to the catalogue and the classification of said cargo, also hereto annexed, as also to the fact of the samples having been exhibited three days before the sale, as required by law.

Whereby the gross proceeds of said sale amounted to eighty thousand and thirty-one dollars 48 cents, which amount I hold agreeably to this order, and subject to the further order of this honorable court.

New Orleans, February 14th, 1865.

A. BAUDOUIN, *Chief Dep'y.*

11 *Proces verbal.*

I, G. A. Hall, U. S. prize auctioneer, do hereby certify that under and by virtue of an order of the hon. district court of the United States eastern district of Louisiana, directed to the U. S. marshal for the district aforesaid, in suit by the United States *vs.* The Cargo of the bark Scicnce, No. 7781 of the docket of said court, I offered the cargo of the bark Science for sale at public auction on Saturday, February 11th, 1865, at 12 o'clock m., at the Merchants' press, yard No. 5, at which said sale the same was sold for cash, at the prices, to the purchasers, and in the lots as hereinafter set forth, to wit:

Purchasers.	Amount.
S. H. Kennedy & Co., 49 bales cotton, 24,317 lbs., at 67 c	$16,292 39
H. Mitchel, 34 bales cotton, 16,290 lbs., at 58 c	9,448 20
Jno. Gauche, 37 bales cotton, 17,777 lbs., at 51 c	9,066 27
W. H. H. Witherell, 18 bales cotton, 6,222 lbs., at 50 c.,	3,111 00
F. D. Darling, 6 bales cotton, 2031 lbs., at 31 c	629 61
F. D. Darling, 2 bales cotton, 687 lbs., at 49½ c	330 07
Friedlander & Gerson, 48 bales cotton, 18,599 lbs., at 50¾,	9,439 00
E. W. Burbank, 22 bales cotton, 9,036 lbs., at 63 c	5,692 68
T. Johnson, 18 bales cotton, 5,904 lbs., at 49¼ c	2,907 72
F. D. Darling, 9 bales cotton, 3,596 lbs., at 29¼ c.,	1,051 83
12 E. W. Burbank, 5 bales cotton, 1,992 lbs., at 51¼ c.,	1,020 90
T. Johnson, 3 bales cotton, 1,053 lbs., at 49¼ c.,	518 61
T. D. Darling, 5 bales cotton, 1,589 lbs., at 30 c	476 70
T. D. Darling, 1 bale cotton, 324 lbs., at 49½ c	147 42
Friedlander & Gerson, 46 bales cotton, 17,361 lbs., at 51½ c	8,940 92
Sam. Bell, 27 bales cotton, 10,489 lbs., at 58¼ c	6,109 84
B. W. Huntington, 10 bales cotton, 3,631 lbs., at 50⅝ c.,	1,838 18
F. D. Darling, 9 bales cotton, 3,617 lbs., at 31 c	1,121 27
F. D. Darling, 1 bale cotton, 437 lbs., at 48 c	209 76
B. W. Huntington, 6 bales cotton, 2,387 lbs., at 55½ c	1,324 78
John Boland, 1 bale cotton, 390 lbs., at 50½ c	196 95
John Brown, 1 bale cotton, 292 lbs., at 25¾ c	75 24
Jno. McGarity, 1 bale cotton, 687 lbs., at 10½ c	72 14
	80,031 48

(E. & O. E.)

G. A. HALL, *U. S. Prize Auct'r.*

To CUTHBERT BULLITT, Esq.,
U. S. Marshal, Eastern District of Louisiana.

Annexed:

Catalogue.

Sale at the Merchants' press, yard No. 5, on Saturday, February 11th, 1865, at twelve o'clock m., by G. A. Hall, U. S. prize
13 auctioneer, by order of Cuthbert Bullitt, U. S. marshal for the eastern district of Louisiana; the cargo of the U. S. prize bark Science, consisting of 359 bales of cotton, in good shipping order.

Lot.	Mark.	No. bales.	Classification.
No. 1	A. V.....	49	(Original.) Strict mid'g and mid'g.
2	O.....	34	(Original.) Strict good ordinary.
3	C.....	37	(Original.) Strict ordinary.
4	A. V.....	18	Reboxed. Good ordinary.
5	B.—A. V...	6	Pickings.
6	P.—A. V...	2	Samples.
7	[S.]—B. & S.	48	(Original.) Ordinary.
8	J.....	22	(Original.) Low middling.
9	B. & S.	18	Reboxed. Good ordinary.
10	[B.]—B. & S.	9	Pickings.
11	P.—M. P. ..	5	(Original.) Ordinary.
12	M. P	3	Reboxed. Good ordinary.
13	B.—M. P. ..	5	Pickings.
14	P.—M. P. ..	1	Samples.
15	[S.]—P. & R.	46	(Original.) Ordinary.
16	A.	27	(Original.) Strict good ordinary.
17	F. & R.	10	Reboxed. Ordinary to good ordinary.
18	B.—P. & R..	9	Pickings.
19	P.—P. & R..	1	Samples.
20	[S.—S. & R.]	6	(Original.) Good ordinary.
21	[S. & R.]...	1	Reboxed. Good ordinary.
22	B.—[S. & R.]	1	Pickings.
23	[S. & R.] P. S.	1	Paper stuff.

14 Samples on exhibition at office of auctioneer. Terms, cash, in U. S. treasury notes; $100 down at time of sale, on each bale.

G. A. HALL, *U. S. Prize Auctioneer.*

Warehouse and sales room, No. 1 Fulton, corner Canal st.

Also annexed:

Copy.

N. O., 4*th Jan'y*, 1865.

DEAR SIR: It is the opinion of the parties who control the cotton forming the cargo of the bark Science that, in the present depressed

condition of the market, the sale as advertised for the 6th inst., is most injudicious, and inasmuch as the cotton is insured up to the 12th February next, I suggest, as proctor for the parties, that it be postponed until the market will afford a better result, which may be expected to occur within the limits of the present policies.

I am, dear sir, very faithfully yours,

(Sig.) EDW. BRIGGS.

To C. BULLITT, *U. S. Marshal.*

15 *Appraisers' report.—Filed February 13th*, 1865.

NEW ORLEANS, *February 10th*, 1865.

SIR: We, the undersigned, duly appointed appraisers, have examined the cargo of the prize bark Science in the Merchants' press, from the Gulf of Mexico, and are of opinion that the actual market value or wholesale prices of the said cotton is, and we do therefore appraise the same, as follows :

Lot.	Marks.	Bales	Description.	W'g't.	Pr. lb.	Value.
No. 1	A. V.	49	(Original.) Strict mid'g and mid'g.	24,317	76 c.	$18,480 92
2	O.....	34	(Original.) Strict good ordinary.	16,290	74 c.	12,054 60
3	C.....	37	(Original.) Good ordinary...	17,777	68 c.	12,088 36
4	A. V.	18	Reboxed. Good ordinary...	6,222	68 c.	4,230 96
5	B.—A. V. ..	6	Pickings	2,031	35 c.	710 85
6	P.—A. V. ..	2	Samples	687	60 c.	412 20
7	[S.]—B. & S.	48	(Original.) Ordinary.....	18,599	65 c.	12,089 35
8	J	22	(Original.) Low middling ..	9,036	72 c.	6,505 92
9	B. & S.	18	Reboxed. Good ordinary...	5,904	68 c.	4,014 72
10	[B.]—B. & S	9	Pickings	3,596	35 c.	1,258 60
11	P.—M. P. ..	5	(Orignal.) Ordinary	1,992	60 c.	1,195 20
12	M. P.	3	Reboxed. Good ordinary ...	1,053	68 c.	716 04
13	B.—M. P. ..	5	Pickings	1,589	37½c.	595 87½
14	P.—M. P. ..	1	Samples	324	60 c.	194 40
15	[S.]—P. & R]	40	(Original.) Ordinary.....	17,361	65 c.	11,284 65
16	A.	27	(Original.) Strict good ordinary.	10,489	72 c.	7,552 08
17	F. & R.	10	Reboxed. Ordinary to good ordinary.	3,631	64 c.	2,323 84
18	B.—F. & R	9	Pickings	3,617	37½c.	1,356 37½
19	P.—F. & R. .	1	Samples	437	60 c.	262 20
20	[S.—S. & R .	6	(Original) Good ordinary...	2,387	65 c.	1,551 55
21	[S. & R] ...	1	Reboxed. Good ordinary...	390	68 c.	265 20
22	B.—[S. & R]	1	Pickings	292	42½c.	124 10
23	P.—[S & R.] P. S.	1	Paper stuff	687	5 c.	34 35
[16]		359				99,302 34

H. G. HEARTT,
RICH'D SWAIN,
U. S. Prize Appraisers.

To U. S. MARSHAL, *Eastern District of La.*

Order allowing marshal's disbursements.—From minutes of February 24th, 1865.

UNITED STATES
vs.
BARK SCIENCE and CARGO. } No. 7781.

17 On motion of Miles Taylor, of counsel for C. Bullett, U. S. marshal for the eastern district of Louisiana, and in presence of Edward Briggs, proctor for the claimants of the cargo, and on suggesting to the court that the disbursements made by the said marshal in the said cause, at the instance and with the authority of the claimants of the cargo, have been actually made by him, amounting to the sum of $10,209 87, as shown by the bill on file, and that said bill is not objected to by the said claimants; and after an examination of the said bill, showing the said disbursements, by the court, it is ordered that the said disbursements set forth in the said bill, and amounting to the said sum of $10,209 87, be allowed, and that the same be paid to the said Cuthbert Bullitt, U. S. marshal, out of the funds now on deposit in the said cause for account of the claimants of the said cargo.

Appraisers' bill.—Filed March 1st, 1865.

UNITED STATES
vs.
BARK SCIENCE and CARGO. } No. 7781.

18 To H. G. Heartt & Rich'd Swain, appraisers, Dr.

FEB'Y 11th, '65.

For appraisement, classification, which does not include all charges borne by us, and for arranging, superintending sales, &c., $80,031 48, at 1½ per cent., $1,200 46.

Order taxing fees of prize auctioneer.—From minutes of March 1st, 1865.

UNITED STATES
vs.
BARK SCIENCE and CARGO. } No. 7781.

On motion of Rufus Waples, U. S. attorney, and on suggesting that he herewith files the detailed bills of G. A. Hall, U. S. prize auctioneer, duly verified, with accompanying vouchers, showing his disbursements—

It is ordered that the said bill, amounting to $427 75, be taxed in the costs and paid out of the proceeds of the property sold by him.

19 *Judgment decreeing claimants to pay all costs, &c.—From minutes of June 3d, 1865.*

UNITED STATES
vs.
BARK SCIENCE and CARGO. } No. 7781.

On the preliminary trial of the cause, considering that the position of the bark Science when captured was a matter of doubt, and with a view to set this question at rest, the court allowed the captors further proof, and extended to the claimants the same privilege, if they chose to accept it. The result of the whole testimony satisfied the mind of the court that the bark Science was captured when anchored south of the line dividing the waters of the Rio Grande, and when, therefore, she was in neutral waters. On that ground the court decreed her restitution, but entertaining grave doubts as to the object of her voyage—so grave, indeed, that but for this consideration, that she was captured in neutral waters, the court would have decreed her condemnation—

It is now ordered and decreed that the costs and charges consequent upon the capture be paid by the claimants, and that damages be refused.

20 *Petition of appeals.—Filed June 29th, 1865.*

United States district court, eastern district of Louisiana, in prize.

UNITED STATES
vs.
THE BARK SCIENCE, HER TACKLE, &c., and HER CARGO. } No. 7781.

To the honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The petition of John Read and De Jersey & Co., claimants herein, respectfully represents that they are aggrieved by the final decree rendered herein on the 3d day of June present, and are advised that there is error therein to their prejudice; that the amount in issue exceeds the sum of two thousand dollars:

Wherefore they pray that an appeal be allowed them therefrom to the next term of the Supreme Court of the United States, upon
21 their giving bond and security, conditioned according to, law in such sum as the court may direct.

ED. BRIGGS, *Proctor.*

Motion and order for appeal.—From minutes of June 29th, 1865.

UNITED STATES
vs.
BARK SCIENCE, &c., and CARGO. } No. 7781.

On motion of Edw. Briggs, proctor for John Read and De Jersey & Co., claimants of the vessel and cargo, and on his presenting a petition praying an appeal from the decree herein rendered on the

3d June instant, to the next term of the Supreme Court of the United States, it is ordered that the same be allowed as prayed for, returnable to said Supreme Court, the first Monday of December next, upon his giving bond in the sum of $250, with good and solvent security, conditioned as the law directs.

22 *Appeal bond.—Filed June 29th,* 1865.

District court of the United States, in admiralty.

UNITED STATES
vs.
BARK SCIENCE, HER TACKLE, &c., and CARGO. } No. 7781.—Appeal bond.

UNITED STATES OF AMERICA, *Eastern district of Louisiana:*

Know all men by these presents that we, Edward Briggs, att'y for John Read and De Jersey & Co., claimants, as principals, and A. Frerichs, as surety, are held and firmly bound unto the United States of America in the sum of two hundred and fifty dollars, ($250,) to be paid to the said United States or assigns, for the payment of which, well and truly to be made in lawful money of the United States, we bind ourselves and each of us, our and each of our heirs, executors, administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at New Orleans, the 29th day of June, 1865.

Whereas the abovenamed claimants have appealed to the
23 next term of the Supreme Court of the United States, from a final judgment of the district court of the United States for said district, rendered against them on the 3d day of June inst., in the above-entitled cause:

Now, therefore, the condition of this obligation is such, that if the abovenamed appellant shall prosecute his appeal to effect, and answer all damages and costs, and satisfy whatever judgment may be rendered against him, if he fails to make his appeal good, then this obligation to be void; otherwise the same shall be and remain in full force and effect.

EDWARD BRIGGS. [L. S.]
A. FRERICHS. [L. S.]

Signed, sealed, and delivered in presence of—
W. S. BENEDICT, *D'y Cl'k.*

The solvency and sufficiency of the surety on this bond is approved and accepted.

E. H. DURELL, *Judge.*

June 29th, 1865.

24 *Bill of Jas. Graham, ex marshal.—Filed August 3d*, 1865.

U. S. MARSHAL'S OFFICE, ———, 1864.

District court of the United States, eastern district of Louisiana.

UNITED STATES
vs.
BARK SCIENCE, &c., and CARGO. } No. 7781.

		Fees.	Disb'm'ts.
1863.			
Nov. 26.	Order of seizure, $2; att'd'g prize com'rs' court, $4	6	
Dec. 7.	Admiralty warrant and libel	4	
7.	Going on board for prize commissioner	5	
7.	Engrossing copy of monition for publication	1	
7.	Monition published in the Era		12
7.	Paid for carrying nautical instruments to office		50
7.	Taking inventory and recording	5	
1864.			
Jan'y 6.	Notice app'g att'y for capture, $2; 3 notices of trial, $6	8	
6.	Bill Keen & Stanley, unbending sails		12
6.	Attendance of deputy unbending sails	5	
Mar. 7.	3 notices of trial	6	
16.	3 notices for test'y, $1 50; 1 notice to att'y for captors, $2	3 50	
Ap'l 4.	4 notices of trial	8	
June 10.	5 copies order for further argument	10	
July 2.	2 citations of appeal to Supreme Court	4	
5.	Order to return sundries to captain,	2	
8.	Paid L. Frigerio for chronometer		2 50
8.	Quarantine fees, board of health		15
25 Aug. 1.	Marshal's custody from Nov'r 26th to date		622 50
Sept. 1.	Marshal's custody from Aug. 1st to date		80
		67 50	744 50

Fees	$67 50
Disbursements	744 50
Com'n on disbursements	14 88
Total	826 88

James Graham, late U. S. marshal, being duly sworn, doth depose and say that the within bill is correct and true, and that the charges were actually incurred for the purposes therein set forth.

JAMES GRAHAM.

Sworn to and subscribed before me this 27th day of July, A. D. 1865.

K. LOEW, *D'y Clerk.*

Approved. E. H. DURELL, *Judge.*

26 *Bill of Cuthbert Bullitt, U. S. marshal.—Filed August 3d, 1865.*

United States district court, eastern district of Louisiana.

UNITED STATES MARSHAL'S OFFICE.

UNITED STATES
vs.
BARK SCIENCE and CARGO. } No. 7781.

1864.			
Sept.	19.	Order of court to store cargo and sell vessel, $2; copy for pub'n, 50 c.	$2 50
	19.	Notice of sale of vessel published in True Delta	12 00
	27.	Notice to appraisers and auctioneers of sale	2 00
	27.	Ins. in La. Mutual Ins. Co. $3,782, less 15 per cent	3,233 20
	27.	Attendance of d'y, discharging and storing cargo	10 00
	37.	Paid discharging clerk, $5; 1 man for watching 4 nights, $10	15 00
	27.	Bill of stevedores, discharging cargo	258 90
	27.	Bill of drayman hauling cargo, $190, and sails to w. h., $20	212 00
Oct.	1.	Preparing for sale, attendance, and delivery, $15; 3 proclamations	15 90
	1.	Commis. on sale of vessel, $22 75, and notice to deliver, $1	23 75
	1.	Marshal's custody from Sept. 2d to Oct. 1st, 30 days, $2 50	75 00
	1.	Storage and labor on sails, $2 50; drayage to Merchants' press, $181 25	183 75
	1.	Return on order of sale, $1; expenses to transfer insurance, $1 25	2 25
	1.	Bill for sampling, classing, marking 334 b. c.	167 00
	1.	Bill for weighing 334 b. c., $87 25; marshal's custody, 31 days in Oct'r, $77 50	164 75
Nov'r	27.	Insurance 15 days on $216,000, $1,080, less 15 p. c.	918 00
Dec'r	3.	Paid Wm. Rowan for labor, $41 75; weighing and reweighing 334 b. c., $145 50	187 25

Dec'r 10.	Bill of pickery, rebaling, reboxing, picking, bagging, &c.	$1,353	97
12.	Insurance, 2 months, $140,000—$2,450, less 15 p. c.	2,082	50
27 12.	Bill of Henry Tavery, superintending	342	00
12.	Bill of storage and labor in Mississippi press	136	00
24.	Order of court to sell cargo, $2; engrossing copy for publ'n, 50 c.	2	50
24.	Notice of sale published in the Era for Jan'y 6th, 1865	19	50
1865.			
Jan'y 31.	Notice of sale published in "Times," $12, and in "True Delta," $12	24	00
31.	Bill of cotton broker, classing, sampling, and marking 357 b. c.	178	50
Feb'y 11.	Preparing for sale, attendance, and delivery	15	00
11.	Commissions on sale cargo, ½ per cent., on $80,031 48	400	15
11.	Bill of government weigher to deliver	89	75
11.	Storage in Merchants' press	412	25
11.	Marshal's custody from Nov. 1st to date, 103 days, at $2 50	257	50
11.	Commissions on disbursements, $232 51; 3 proclamations, at sale, 90 c.	233	41
11.	Recording proces verbal, $1; return on vend. exp's.	2	00
	Total amount of costs and charges	11,021	58
Rec'd on acc. of disbursements proper by order of court,		10,209	87
	Balance due to U. S. marshal	811	71

Cuthbert Bullitt, U. S. marshal, being duly sworn, doth depose and say that the above bill is just and true; that the charges therein were actually necessary, and incurred for the purposes therein set forth.

CUTHBERT BULLITT, *U. S. Marshal.*

Sworn to and subscribed before me this 14th July, 1865.

W. S. BENEDICT, *D'y Clerk.*

Approved.

E. H. DURELL, *Judge.*

28 *Taxation of costs.—From minutes of August 3d, 1865.*

UNITED STATES
vs.
BARK SCIENCE and CARGO. } No. 7781.

Ordered and decreed that the costs and charges in this case be taxed, allowed, and paid as follows, to wit :

District attorney		$889 31
Clerk		228 50
" additional		25 00
James Graham, ex marshal		826 88
C. Bullitt, marshal		11,021 58
Appraisers' fees on cargo, 1 per cent.		800 31
" fees on vessel, 1 per cent.		89 00
Prize commissioners		400 00
Hall, auctioneer		427 75
Bill, piloting		40 25
		14,749 58

The above bill is entitled to the following credits, to wit :

To amount Marshal Bullitt's disbursements allowed him by order of court under date 24th of February, 1865	$10,209 87	
To amount bill charges allowed G. A. Hall, auct'r, by order of court of 1st March, 1865,	427 75	
		10,637 62
Leaving due and unpaid		4,111 96

29 District court of the United States, eastern district of Louisiana.

I certify that the foregoing 28 pages, together with the transcript of appeal already on file in the Supreme Court of the United States, do contain and form a correct and complete transcript of the original record in the case of the United States *vs.* Bark Science and cargo, No. 7781 of the docket.

In testimony whereof, I hereto set my hand and the seal of our court, at New Orleans, this 5th day of August, A. D. 1865, and the 90th year of the American independence.

K. LOEW, *D'y Cl'k.*

30 It is agreed that the record shall go up in this form, and that the transcript heretofore forwarded shall be considered as a part of it ; the object of this agreement being merely to save the labor and costs of recopying it.

P. RUFUS WAPLES, *U. S. Att'y.*
EDWARD BRIGGS, *for Claimants.*

Filed January 16, 1866.

Supreme Court of the United States.

No. 99.

THE UNITED STATES

vs.

THE BARK SCIENCE AND CARGO.

BRIEF FOR CLAIMANT.

WILLIAM MARVIN, *Counsel for Claimant.*

New-York:
JOHN W. AMERMAN, LAW PRINTER,
No. 47 CEDAR STREET.

1867.

Supreme Court of the United States.

THE UNITED STATES

vs.

The Bark SCIENCE and Cargo.

Prize.

No. 99.

This vessel, sailing under the British flag and carrying a British register, (top page 18,) commanded by John Read, residing at Tramore, Ireland, sailed from London on or about the 15th day of June, 1863, with a general cargo on board, for Matamoras, and after discharging her cargo, and while taking in a return cargo of cotton, was captured on the 5th day of November, in the roadstead off the mouth of the Rio Grande, by the United States gunboat Virginia.

The vessel was chartered and loaded by James J. Bennet and Wake, agents and ship-brokers of London, and consigned with her cargo to Messrs. Wolf & Hildesheim, of Matamoras.

See the charter-party, bill of lading, and letter of instruction to the captain, and receipts for the cargo delivered on board lighters at Matamoras, at pages 12, 13, 14, 15 and 16. See, also, the certificate of the registry of the vessel, at page 18.

The outward cargo consisted, the captain deposes, of 4,000 boxes of brandy, about 30 tons of bar and bundle iron, and 587, or thereabouts, bales of merchandise, the contents of which were unknown to the captain. This had all been landed at Matamoras. So much of the return cargo as had been put on board at the time of the capture consisted of 344 bales of cotton and 30 slabs of copper. For this no bills of lading had been as yet signed, nor invoices or manifest made out, the vessel not having completed her loading. Messrs. Folke & Wilkins, of Matamoras, were shippers of a part of this cargo.

The captain claims the bark and cargo, *virtute officii*, for and on account of their respective owners, (page 22.) Messrs. De Jersey & Co., merchants, of Manchester, England, intervening for their own separate interest, claim ninety-seven bales of the cotton. (Page 21.)

By its decree, pronounced on the 15th day of June, 1864, the court below ordered the libel to be dismissed, and the vessel and cargo to be restored.

See decree, top page 30.

From this decree the District Attorney appealed. On the 3d day of June, 1865, the court pronounced a further decree, ordering that the costs and charges be paid by the claimants, and that damages be refused. From this decree the claimants appealed, and both appeals are now before this court for its decision. (See supplemental record, page 9.)

We claim that the decree dismissing the libel and ordering the vessel and cargo to be restored, ought to be affirmed, and that the decree refusing damages for the unjust capture and detention, and costs, ought to be reversed, and that the claimant ought to be awarded damages and costs.

1. Because, in the absence of any evidence of enemy interest, the neutral ownership of ship and cargo are sufficiently proved.

2. No violation or attempted violation of blockade, nor any carrying or attempting to carry contraband of war to the enemy is proved. No blockade existed in fact. Vessels of all nations were constantly trading at the port of Matamoras, with the knowledge of the government and in the presence of the United States cruisers. This very vessel unloaded and loaded in their presence without being warned off or forbidden.

3. No reasonable ground of capture is shown to have existed at the time of capture.

4. Because the proof shows that the trade was by neutrals, with neutrals, and on account of neutrals. The charter-party (page 13) shows that the vessel was chartered in Liverpool, by Messrs. Bennet & Wake, ship brokers, to carry a cargo to Matamoras, and bring another back to Liverpool; and the captain's bill of lading (page 13) shows that the cargo was shipped by these gentlemen, and consigned to Wolfe & Hildeshein, of Matamoras. This cargo was delivered at Matamoras. "The outward cargo," the captain deposes, "had been all discharged at Matamoras." Of course the bills of lading, letters of advice, invoices, and all other papers concerning this outward cargo, had been delivered to the proper persons in Matamoras. The cargo on board at the time of the capture (the cotton) was shipped from Matamoras. The captain deposes, in answer to interrogatory 29, page 6, "I saw, at the consignee's office, at Matamoras, a document signed by the U. S. Consul there, that the cotton on board was shipped by merchants of Matamoras, and had passed through the Mexican Custom House." There had been as yet no bills of lading signed for the cargo, the vessel not being loaded. But the whole transaction shows a trade with Matamoras alone.

5. If the vessel lay on the north or American side of the dividing line, between the waters of Mexico and the United

States, of which there is some doubt, this is no cause for capture or condemnation. Anchoring in American waters is itself no offence against international law, nor against any statute law of Congress.

The Fame, 3 *Mason*, 147.

Wm. Marvin,
Counsel for Claimants.

In the Supreme Court of the United States.

DECEMBER TERM, 1866.

UNITED STATES, Appellants,
vs.
THE BARK SCIENCE AND CARGO. } No. 99.

THE BARK SCIENCE AND CARGO
vs.
UNITED STATES. } No. 251.

Appeals from the district court for the eastern district of Louisiana.

THE CASE IN THE DISTRICT COURT.

The capture was made on November 5, 1863, while the vessel was lying off the Rio Grande engaged in taking on board a cargo, mainly of cotton, ostensibly from Matamoras.

It appears that she was about two-thirds loaded at the time, (Rec., p. 6.) The cargo actually on board consisted of 344 bales of cotton and 30 slabs of copper. (Rec., p. 5.)

On December 28, 1863, DE JERSEY & Co., "a commercial firm domiciliated in Manchester, England, and composed of subjects of the Queen of Great Britain," intervened and claimed 97 *bales of cotton*, through their alleged agent and attorney in fact, Fred. Mysing.

This "*claim and answer*" alleged that the claimants, through their agents, Focke and Wilkins, at Matamoras, prior to November 5, 1863, "did lade and put on board the barque Science the said 97 bales of cotton, and consigned to
at Liverpool; that said cotton was duly entered in the custom-house at Matamoras, and the Mexican duties paid thereon." (Rec., pp. 21, 22.)

This paper contained none of the essential averments of the test-affidavit in a prize cause, and should not have been permitted to be filed, otherwise than as *provisional* claim. On same day JOHN READ, master of the Science, claimed the vessel and cargo for his principals, the owners of the same. (Rec., p. 22.) This paper does not state the names of owners of either vessel or cargo, and does not even aver absence of hostile interests therein.

On June 15, 1864, the court dismissed the libel and restored vessel and cargo to claimants, on the ground that the capture occurred south of the line dividing the waters of the Rio Grande; and afterwards, on June 3, 1865, the court ordered that costs and charges consequent on the capture be paid by the claimants, and that damages be refused. (Rec., No. 251, p. 9.)

GENERAL FACTS OF THE CASE.

The vessel was chartered June 11, 1863, by the owner, John Angel, to James J. Bennett & Wake, ship brokers and freighters of London, for voyage to Matamoras and to there reload from factors of the freighters, and thence proceed to a port in Great Britain or the continent. (Rec., p. 14.)

BENNETT & WAKE, it will be remembered, are the parties who fitted out and managed the *Peterhoff*, for the voyage to Matamoras, on which that vessel was captured.

A cargo of 6,913 pieces and packages, not described in the bill of lading, was shipped by Bennett & Wake, "*as agents*," under this charter, and consigned to Messrs. Wolf & Hildeshein, at Matamoras. (See bill of lading, Rec., p. 13.) It seems that no invoice of this cargo was on board, and the master swears that he did not know the contents of the 587 *bales* which were covered by the bill of lading. (Rec., p. 5.) He says, however, that he knows there were on board 4,000 boxes of brandy, and about 30 tons of bar and bundle iron. The mate supplies this deficiency in our knowledge touching the contents of these *bales* in the outward cargo. He says they contained *grey woollen cloth*. (Rec., p. 8. See also letter of captor to district judge. Rec. p. 20, 21.)

The evidence in the case of the *Volant* (No. 138) completes our information as to the contents of the bales. It there appears that the cargoes of both the *Science* and *Volant* were parts of the same consignment by *Bennett & Wake* as "agents" to Matamoras, and that the "bales" in both vessels contained "confederate uniform woollen cloth."

The Science delivered her *brandy, iron,* and *bales* to *Wolf & Hildershein,* (Rec., pp. 15, 16,) in September, 1863, and had taken on board a part of her return cargo to Europe when captured.

She had on board 344 bales of cotton and 30 slabs of copper.

The papers and testimony in the case afford no clue to the ownership and destination of this property, or any of it.

The master simply says: "Of the cargo, I believe the owners are British subjects residing in Matamoras. I know nothing more about them." (Rec., p. 5.)

A part of the cargo was *shipped,* he says, by Foke & Wilkins, of Matamoras. "The names of the other shippers, not having signed bills of lading, I do not know." (Rec., p. 6.) No bills of lading, invoices or letters, were found on board. The alleged shippers of a portion of the cotton are the persons, perhaps, referred to in the *answer* of *De Jersey & Co.,* as their agents in the shipment of the ninety-seven bales claimed by them, through Fred. Mysing.

POINTS.

FIRST.—*There is no evidence, that we discover, that the capture occurred in neutral waters.*

SECOND.—*The ownership of the cargo by neutral persons, is not attested by the preparatory proofs and papers.*

The master does not know the names of the owners of any of the cargo. He knows the names simply of the laders of a *portion* of it. (Rec., pp. 5, 6.)

No proprietary papers were on board, and none are produced by the claimants.

THIRD.—*The claims filed specially on behalf of De Jersey & Co., by Mysing, and generally on behalf of the owners of the cargo, by the master, must be dismissed.*

1. They are informal, irregular, and deficient in all the essentials of a proper claim in a prize proceeding.

2. The De Jersey claim for ninety-seven bales of cotton is unsupported by a word of evidence from the record. It does not appear, either, that Mysing has any authority to make such a claim.

FOURTH.—*If the claim filed should not be directed to be dismissed, and the property condemned for want of claim, the only proper disposition of the case will be, to direct further proof to be given by the claimants of cargo on the question of ownership, and as to the general character of the transactions.*

The rule is that further proof is in all cases necessary when the master does not swear to or give account of the property; where the shipment, though stated to be on neutral account, is not stated to be on account of any particular person; where there has been any loss or suppression of material papers; and, indeed, in all cases where the defects of the papers, the conduct of the parties, the nature of the voyage, or the original evidence in general, induces any doubt of the proprietary interest, the legality of the trade, or the integrity of the transactions.

3 Phillimore, 600.

FIFTH.—*The general remark is justified by the evidence, that it is in the highest degree probable that the outward cargo was of contraband articles, destined for the military use of the confederate government, and sent to Matamoras for shipment to Texas, and that this captured cargo of cotton, or a portion of it, was shipped in return for the outward cargo, probably through Matamoras, but in fact from the same hostile region.*

This explains the absence of claims, and the omission of

the alleged owners to appear and produce, or offer to produce, the evidence of their interest.

If this cargo had been shipped entirely independently of the outward cargo, and had been obtained in good faith in the market of Matamoras, and had been going solely on account of neutral owners, there is every reason to believe, from the nature of things, and the experience of prize cases, that it would have been claimed in due form by the owners, and that their claims would have been supported by all needful proof.

HENRY STANBERY,
J. HUBLEY ASHTON,
For United States.
C. EAMES,
For Captors.